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ABSTRACT

Private school regulation is a growing concern among school choice proponents. This paper uses a national survey of private schools to analyze the potential effects of various regulations. More than 1,000 schools answered questions about their willingness to participate in school choice programs if they had to comply with particular regulations. Results revealed that directors of many private schools would rather turn down "free money" than compromise the core qualities of their schools. Different kinds of schools often did not agree on what those core qualities were. The paper examines some economic flaws in school choice programs and explains why limiting student eligibility narrows the market and stunts improvement and why school choice policies must be carefully crafted to consider the dominance and funding structure of Catholic schools. Finally, the paper provides guidelines for school choice policymakers: create broad-based demand; create a wide-open playing field on which schools may differentiate themselves and compete, and eliminate entry barriers to new schools; avoid skewing prices with tuition caps, or non-need-based subsidization; and avoid conflicts of interest between the people paying for education and the parents and children benefiting by creating a system that maximizes direct payment by parents and minimizes coercive wealth transfers through the state. (Contains 68 endnotes.) (SM)

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The Struggle for School Choice Policy after Zelman

Regulation vs. the Free Market

by H. Lillian Omand

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Executive Summary

Supporters of a free market in education have immense constitutional discretion in crafting school choice programs in the wake of the Supreme Court's landmark 2002 decision in *Zelman v. Simmons-Harris*. It is now time to focus carefully on the *details* of school choice programs, to discern what specific legislative provisions and regulations advance or impede the development of a free market.

Regulation of private schools is a growing concern among proponents of school choice. This paper uses a national survey of private schools as a basis for analyzing the potential effects of various regulations. More than a thousand schools responded to questions about their willingness to participate in a school choice program if they had to comply with particular regulations. The survey reveals that the directors of many private schools would rather turn down "free money" than compromise the core qualities of their schools; it also reveals that different kinds of schools often do not agree on what those core qualaities are.

The paper also examines some economic flaws in school choice programs and explains why limiting student eligibility narrows the market and stunts improvement and why school choice policies must be carefully crafted to take into account the dominance and funding structure of Catholic schools.

Finally, the paper provides a series of dos and don'ts for school choice policymakers, organized under four principles. First, create broad-based demand. Second, create a wide-open playing field on which schools may differentiate themselves and compete, and eliminate entry barriers to new schools. Third, avoid skewing prices with tuition caps or non-need-based subsidization. Finally, avoid conflicts of interest between the people paying for education and the parents and children benefiting from education by creating a system that maximizes direct payment by parents and minimizes coercive wealth transfers through the state.

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Any school choice program that tries to introduce competitive efficiency without educational freedom will be far less effective than a program that pursues both goals together.

Introduction

After more than a decade of intense public debate, the Supreme Court of the United States squarely addressed the constitutionality of school vouchers on June 27, 2002. Its decision in *Zelman v. Simmons-Harris* decisively approved school choice plans in the broadest possible terms: public funds may flow to private, including religious, schools so long as they reach the schools "wholly as a result of [a parent's] own genuine and independent private choice."[1] The decision gives proponents of school choice immense room to maneuver in deciding how to construct school choice legislation.

Most policymakers are familiar with the basic arguments in favor of a free market in education. The most common argument is virtually indisputable: public schools have a government-imposed monopoly on elementary and secondary education, inevitably producing inefficiencies. A competitive education marketplace would produce much greater upward pressures on quality and downward pressures on price. The second argument is not economic but is derived from the ideal of liberty of conscience, deeply ingrained in American culture: parents should be free to choose the content, method, values, and other details of their children's education. Thus, when parents exercise their right to choose an educational environment for their children different from that of public schools, it seems unfair that they should have to pay both private school tuition and taxes to support a public system they are not using.

The goal of a competitive education marketplace and the goal of increased educational freedom for parents are closely aligned. The benefits of a competitive education marketplace are dependent on the ability of schools to innovate and differentiate themselves from their competition. The process of innovation and differentiation improves quality and increases choices, and an industry that is given little room to do that has limited ability to improve customer satisfaction. The goals of competitive efficiency and educational freedom are thus inseparable. Any school choice program that tries to introduce competitive efficiency without educational freedom will be far less effective than a program that pursues both goals together.

Types of School Choice Programs

"School choice" encompasses a broad variety of public and private programs. The most basic distinction among school choice programs is the source of funds used to pay for private school tuition. When the government makes direct payments to parents or schools, the program is generally called a "voucher." A second kind of program is a tax credit; parents or donors pay the school and reduce their state tax liability accordingly.[2]

The next distinction concerns which children are eligible to benefit from the voucher or tax credit. Many programs have limited eligibility, generally based on family income or the status of the local public school or district as "failing," or both. In contrast, "universal" school choice programs are available to all children of elementary or secondary school age, regardless of their parents' income or the perceived quality of their local public school.

The third distinction applies only to tax credits: who is eligible to claim a credit? "Personal" tax credits allow parents to take a credit for some or all of the money they spend on private school tuition for their own children. Personal tax credits are usually universal in child eligibility, but in practice low-income families with minimal tax liabilities do not receive a significant advantage from those programs. "Scholarship" tax credits allow individuals or corporations, or both, to take a credit for donations to a scholarship-granting organization, which in turn pays the tuition of children, almost always children from low-income families. A program may also combine personal and scholarship tax credits; this is termed a "universal tax credit" because it benefits low-income students via the scholarship

tax credits and higher-income students via the personal tax credits.

The final distinction concerns how the school choice program defines eligible participating schools. A few programs do not define school eligibility at all, implying eligibility of any private school legally operating under state law. Most programs provide that funds cannot be distributed to schools unless they meet certain eligibility requirements. Some common regulations found in enacted or proposed school choice legislation follow.

- Nondiscrimination: Most programs require that schools not discriminate on the basis of race, color, or ethnicity.[3] Others add factors such as sex, family status, economic status, or disability.[4] All existing voucher programs also prohibit admissions preferences based on religion.[5]
- Nonselective admissions policies: Some programs specify that schools may not refuse enrollment to any voucher-bearing student who wishes to attend. If there is a scarcity of spaces, schools must use a random lottery to determine enrollment. Admission cannot be based on testing or previous school record.[6]
- Expulsion policies: A few programs require schools to provide parents with a written expulsion policy and dictate that no voucher-receiving child may be expelled except according to the provisions of the policy.[7]
- Tuition caps: Some programs provide that if the school's normal tuition rate exceeds the maximum scholarship amount, the school cannot charge the difference to the parent[8] (or can charge only a limited amount).[9]
- Religious activity "opt-out": Some programs provide that parents of voucher recipients must be given the option to request that their children be exempted from all religious activities.[10]
- Fiscal viability or accountability: Some programs require that schools demonstrate their ability to operate for a full school year on current assets, expected tuition, and voucher revenue.[11] Some require schools to submit to audits by the state.[12]
- Accreditation: Some programs require schools to be accredited by a recognized private accrediting body, or the school must be approved by the state on the basis of specified criteria.[13]
- Teacher qualifications: A few programs require that teachers hold a bachelor's degree, have three years of experience, or be otherwise qualified to teach the particular subject matter.[14] State certification or licensure of teachers is not required except where required for all private schools.[15]
- Standardized testing: Some programs require private schools to administer the same standardized tests required of public schools in the state.[16] One program would require that the school repay the voucher funds to the state if a voucher child does not meet a minimum score.[17]

Table 1 outlines the details of the major forms of school choice and indicates what types of school regulations tend to be present under the different forms of school choice.[18]

Economic Flaws in School Choice Programs

Limited Eligibility

Virtually all existing school choice programs—including all the privately funded programs—limit eligibility for children.[19] Most often eligibility is limited to families with very low incomes. Although caps are often set near 200 percent of the federal poverty line, this amounts to a mere $24,240 for a single parent with one child and $36,800 for a family of four.[20] In addition, most of these programs limit eligibility to a particular urban area where the cost of living is higher than average, so in practical effect they reach only families who are truly poor; those who can barely pay for basic necessities regardless of private school tuition.

Some programs specify that schools may not refuse enrollment to any voucher-bearing student who wishes to attend.

Table 1
Types of School Choice Programs and Typical Regulations

	Administrative Mechanics				Typical Regulations on Participating Schools						
	Direct source of funds	Beneficiaries of funds	Typical amount	Where enacted; where proposed	Nondiscrimination	Admissions controls	Price caps for participating students	Opt-out of religious activity	Fiscal liquidity or reporting requirements	Accreditation	State standardized testing
Vouchers											
Limited	Government	Low-income or other disadvantaged children	$2,000–$6,000	Milwaukee, Cleveland, Fla., Colo.; numerous proposals	Yes	Usually	Usually	Some	Usually	Some	Some
Universal	Government	All children	Proposed: $4,000 full public per pupil cost	None enacted; Cal. Prop. 38, numerous current proposals	Yes	Usually not	Usually not	Usually not	Usually	Some	Usually
Refundable tax credit*	Government, offset by personal tax liability	Usually disadvantaged children, may be all children	Proposed: $3,000	None enacted; at least one proposal	Generalization inappropriate given only one legislative proposal that does not define eligible schools.						
Tax Credits											
Personal	Parents	Usually all children, may be low-income children only	$250–$500, Proposed: $1,000–$4,000	Illinois, Iowa; few proposals	Usually	No	No	No	No	Few	No
Scholarship	Donors: individuals, corporations, or both	Only or primarily low-income children	$3,000–$4,000	Arizona, Florida, Pennsylvania; numerous proposals	Usually	No	No	No	Few	Few	No
Universal	Parents and donors	All children	Proposed: $2,000	None enacted; at least one serious proposal (Utah)	Generalization inappropriate given only one legislative proposal that does not define eligible schools.						

*Refundable tax credits are similar to vouchers in that many families would receive a check drawn on the state treasury because the amount of the credit exceeds their tax bill.

If the idea behind school choice is to provide an escape from the most desperate situations, this approach makes sense. However, no one could seriously contend that this creates a true free market. Many families whose incomes are too high may still be unable to afford private education and may still be unhappy with the rational choices available to them. Supporters of limited eligibility programs may counter that they make no pretense of providing a free market for everyone, but at least they provide benefits of the free market to the neediest families. But how true is that?

In a free market, quality improves because customers will abandon lower-quality suppliers for higher quality. If the price is fixed, it takes only a marginal increase in quality to give a supplier a competitive advantage. Therefore, if the voucher, tax credit, or scholarship covers the entire cost of tuition, keeping the price for parents at zero, private schools need to be only marginally better than the local public schools. Often low-income families are concentrated in districts where the local public schools set a very low bar indeed. Therefore, we can expect benefits to students to be rather modest. However, when parents have to make financial sacrifices to choose a new school, they tend to demand more of that school, increasing the competitive pressure and therefore school quality.

The empirical evidence supports the modest expectations hypothesized for limited-eligibility school choice. In Milwaukee parents must be below 175 percent of the poverty line and pay nothing toward tuition. Test score increases have been negligible, though at least some parents have expressed increased satisfaction with their selected private school, and according to anecdotal evidence discipline is up and violence is down.[21] In Cleveland most parents must be below 200 percent of the poverty line and pay $250 toward tuition. Again, test score improvement has been insignificant, though parents express greater satisfaction with school academic quality, safety, and discipline.[22]

Privately funded scholarship programs have achieved more quantifiable improvements, though only for African-American students.[23] Each of these programs provides partial scholarships for low-income families, and parents typically contribute a little more than $1,000 per child. The New York study found a 9.2 percentile point increase (0.45 standard deviations) in the Iowa Basic Skills test for African-American students attending private school for three years on scholarship compared with the control group who stayed in public school.[24] The District of Columbia study found that African-American participants in the Washington Scholarship Fund improved nine percentile points after attending private school for two years. In Dayton, African Americans improved by seven percentile points after two years in private schools.[25] By way of comparison, the difference between white and black SAT scores is 0.83 standard deviations, and children from families with incomes below $20,000 score almost 0.5 standard deviations below average.[26] In other words, the privately funded scholarship programs that require parents to make significant personal contributions do help disadvantaged African-American students significantly. But they still do not manage to pull those students up to the level of the average public school student, nor do they seem to have any significant impact on the academic achievement of white or Hispanic students.

If monopolies are inefficient, then even average and above-average public schools are not all that they can be. To see significant gains in educational quality, choice must be available to all families who live in a wide geographic area, not just to low-income families in inner cities. Private schools in middle-income neighborhoods have to compete against a much higher baseline standard, forcing them to achieve a much higher quality than private schools that have to compete only against failing inner-city public schools. To the extent that low-income children have transportation options available and can choose higher-quality private schools, the private schools in the lower-income neighborhoods will also be pushed to improve. That would raise the competitive bar enormously. Private schools in

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higher-income neighborhoods with tougher competition and more resources may also discover innovative educational techniques that can then be used to benefit all schools.

The best that limited-eligibility programs can hope to accomplish is to narrow the gap between disadvantaged and average students, and then *only* if parents pay a significant portion of tuition. School choice must be available to middle-income families as well if the goal is generalized improvement in educational quality, or even providing better-quality education to low-income families without requiring Herculean financial sacrifices.

School choice must be available to middle-income families if the goal is generalized improvement in educational quality.

Catholic School Domination and Subsidization

Catholic schools dominate the market for low-cost private education, and they accomplish this by offering education heavily subsidized by parish and diocesan funds. This is hardly an unknown fact, yet its impact on school choice programs is rarely discussed by proponents. According to the National Catholic Educational Association, tuition covers less than 60 percent of the cost of elementary education in Catholic schools; 10 percent comes from fundraising and endowments; and the remaining 30 percent comes from parish, diocesan, and other sources.[27] In inner-city Catholic elementary schools, tuition covers only 49 percent of the per pupil cost. Even though non-Catholics are usually charged a higher tuition rate than parishioners, inner-city non-Catholic elementary students still pay only 61.5 percent of the cost of their education.[28]

Since the 1960s, Catholic school enrollment has significantly declined, leaving many schools with valuable properties and underfilled classrooms.[29] If the cost of education is largely based on property costs and teacher salaries, then the *marginal* cost of filling empty seats will generally be less than the subsidized tuition. Many Catholic schools are happy to take on a significant but finite number of new students because they reduce the subsidization burden. But those schools may not be willing to add new teachers or expand buildings because this probably will make the marginal cost of the new students higher than existing tuition rates.

Potential new schools simply cannot match Catholic schools in price; most will be almost double in price no matter how hard they try to cut costs.[30] It has been argued that other schools can procure donations to provide their own subsidization. That is true, but in practice schools unattached to churches will have to solicit donations by much more expensive methods than requests from the pulpit, creating a significant disadvantage for nonreligious and independent religious schools. Even apart from the subsidization issue, Catholic schools have an enormous capital advantage because of existing property ownership and the intangible but highly valuable capital of a well-established reputation.

To provide some downward pressure on price, school choice programs place low caps on the amount of the voucher, scholarship, or credit or require parents to pay a significant percentage of tuition, or both. That creates strong incentives to choose lower-priced schools. When such a program limits eligibility to low-income families, it creates a very strong bias in favor of choosing Catholic schools, whether or not the parents actually prefer Catholic schools. Under those conditions, new schools have almost no hope for survival until virtually every empty seat in local Catholic schools has been filled. Even then, the additional eligible families may simply be unable to pay their share for higher-tuition schools. The demand, shaped by the limitations of the school choice program, will not be sufficient to support the formation of any new schools.

The Cleveland voucher program illustrates that phenomenon. The Cleveland voucher is capped at $2,250 for low-income families and $1,875 for non-low-income families. Schools can collect only an additional $250 from the low-income families, capping total revenue at $2,500 for each voucher-receiving child. The parental copayment is not capped for non-low-income families, but the statute greatly limits the number of non-low-income families who

can participate. The result: virtually all participating students attend religious schools,[31] 80 percent of which are Catholic.[32] The few nonreligious schools that originally participated have turned into charter schools or gone bankrupt.[33] Overall, private school enrollment has remained flat since the voucher was introduced,[34] suggesting that the program does little to change the education market except to stop the slow decline of Catholic school enrollment.

The Florida scholarship tax credit program, just started in 2002, provides a remarkable contrast to the Cleveland model. This statewide program limits eligibility to families qualifying for the federal reduced-price lunch program (185 percent of poverty), but the maximum scholarship is $3,500, a more realistic sum for non-Catholic schools, at least in Florida. Only students who were attending public school in the previous year or are entering first grade or kindergarten are eligible.

The results in Florida are strikingly different from those in Cleveland, as well as all other scholarship tax credit programs.[35] The statute authorized $50 million in tax credits, resulting in 16,000 scholarships mostly at or near the $3,500 maximum. Almost all of those 16,000 children are new to private schooling, and certainly a majority would not be in private schools but for the scholarships. The participating schools better reflect the population they serve. In the Tampa area, for instance, only 10 percent of participating students are attending Catholic schools, 52 percent are attending Protestant schools, 20 percent nonreligious schools, and 18 percent other religious schools.[36] Schools quickly adjusted their tuition rates to maximize the benefit from the scholarship, and Catholic schools now charge rates higher than Protestant schools and almost equal to nonreligious schools. A separate private fund created to help establish new private schools or expand existing ones has granted money to 48 schools thus far.[37]

The Milwaukee voucher program also illustrates the growth of a diverse private school market when a school choice program does not push parents to choose Catholic schools. For the first five years of the Milwaukee voucher only nonreligious schools were allowed to participate. The law was changed to include religious schools in 1995, but a court injunction forbade religious schools from actually receiving vouchers until the constitutional litigation was resolved. In the meantime Partners Advancing Values in Education funded scholarships for religious schools. By the time the constitutional question was resolved by the Wisconsin Supreme Court in 1998, PAVE had 4,500 privately funded scholarships to hand over for voucher funding, and there were 1,500 students attending nonreligious schools under the original voucher program.

Dozens of new private schools have been established in Milwaukee since the founding of the program, and they display remarkable diversity in terms of religious affiliation or lack thereof, as well as curricular approaches.[38] Some schools have gone bankrupt; others have opened additional campuses.[39] The head start given to nonreligious schools and a generous voucher cap (currently $5,783) have provided fertile ground for entrepreneurial efforts, educational diversity, and competitive weeding.

Regulatory Flaws in School Choice Programs

Public Funding: A Regulatory Magnet

Ideally, it is the parent who should decide the content and method of education, but in any market, the person who pays the piper calls the tune. Where governments pay for education, they have substantial power to determine the content and method of education, even when they do not actually own the schools. Andrew Coulson explains:

> When people choose to spend money on something, they like to know they are getting what they pay for. Doing that is comparatively straightforward when the money is their own. But government spending makes the relationship between

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Because scholarship tax credits enable children to attend private school through the voluntary donations of others, the possibilities for conflict and regulation are much narrower.

> the buyer and seller an indirect one, since individuals can no longer monitor their own investments. To satisfy our desire for accountability, we . . . impose regulations which, we hope, will do the job for us. But not everyone has the same education preferences.... As a result, a panoply of regulations tends to arise, as countless different interest groups attempt to restrict the kinds of activities they find objectionable. In the end, the freedom of schools to innovate, and to tailor their services to particular audiences, is impeded.[40]

The danger of harmful regulation is thus worse for voucher programs than for tax credits. All taxpayers must fund voucher programs, which gives rise to an enormously diverse collection of interest groups pulling regulatory policy in various directions. Tax credits, by contrast, do not require anyone to fund private education. Because scholarship tax credits enable children to attend private school through the voluntary donations of others, the possibilities for conflict and regulation are much narrower. Personal tax credits eliminate the conflict entirely.

A quick review of Table 1 shows that existing voucher programs are more heavily regulated than tax credit programs. All the current voucher programs place numerous regulations on participating private schools. Schools participating in tax credit programs are very minimally regulated by the state, if at all. Although some voucher programs have been proposed that would have as few regulations as tax credit programs, none has become law. Even if an unregulated voucher program were to pass, it would be difficult to sustain, as regulations would likely be imposed later by legislative amendment, bureaucratic rule making, or judicial imposition.

Targets of Regulation Speak Out: The Private Schools Survey

To gain insight into the effect of regulations on the private school market, the author conducted a nationwide survey of private schools (see Appendix for survey methodology). The survey sample consisted of 5,573 private schools that were identified through the Children's Scholarship Fund, a network of privately funded school choice scholarship programs.[41] About half of the Children's Scholarship Fund offices agreed to ask participating schools (and sometimes other area schools) to take the survey. Table 2 lists the participating programs. The principal or director of each school was asked to complete the survey online. Just over 1,000 responses were collected.

The survey asked school directors a set of four similar questions about each of 11 regulations:

1. Would you support (vote for or advocate) a school choice initiative that included this regulation?
2. Would your school participate if 5–10 percent of children in your geographic area qualified for such a program?
3. Would your school participate if 30–50 percent of children in your geographic area qualified for such a program?
4. Would your school participate if nearly 100 percent of children in your geographic area qualified for such a program?

Surprisingly, for most questions only about 5 percent of principals changed their answers about program participation depending on what percentage of students would qualify for the program.[42] In a competitive market, one would expect the percentage of schools indicating they would participate to shoot up as the number of eligible students increased. Instead, there is virtually no change, whether initial levels of support for a particular regulation are low or high.[43]

Why do private K–12 schools have such adamant reactions to proposed regulations? One explanation, particularly applicable to religious schools, was provided by a number of school directors in the comment box provided toward the end of the survey: "We would rather close than compromise our mission." It is also quite plausible that principals think "this school survives now against competition from 'free' public schools for all children, so

Table 2
Survey Participation and Responses by Program

Program	Schools Notified	Schools Responding
Children's Scholarship Fund Alabama	92	5
Arizona School Choice Trust	204	9
Children's Scholarship Fund Arkansas †	182	105
Children's Scholarship Fund Atlanta	69	3
The BASIC Fund (Bay Area)	202	49
Children's Scholarship Fund Boston	42	3
Children's Scholarship Fund Charlotte	58	52
Children's Scholarship Fund Chicago	263	20
Children's Scholarship Fund of Greater Cincinnati	112	21
Children's Education Fund (Dallas)	73	37
PACE Program (Dayton)	53	41
ACE Scholarships (Denver) †	118	19
STAR Sponsorship Program (Fort Worth)	79	41
Children's Scholarship Fund Metro Jackson	48	4
Children's Scholarship Fund Jersey City/ Elizabeth/Newark	193	6
Children's Scholarship Fund of Kansas City †	169	92
Los Angeles Children's Scholarship Fund	409	26
Children's Scholarship Fund Miami	65	3
KidsFirst Scholarship Fund of Minnesota †	121	91
Children's Scholarship Fund New Orleans	143	26
Children's Scholarship Fund New York City	505	162
Private schools of North Carolina ‡	606	65
Children's Scholarship Fund Pittsburgh	101	8
Washington Scholarship Fund (DC)	136	15
Children's Scholarship Fund National, West	334	24
Children's Scholarship Fund National, Southeast	263	14
Children's Scholarship Fund National, Midwest/Northeast	933	66
Total	5,573	1,007

†Also surveyed area private schools not actively participating in the program.
‡Children's Scholarship Fund Charlotte surveyed all private schools in North Carolina. Schools participating in the Charlotte program are listed separately.

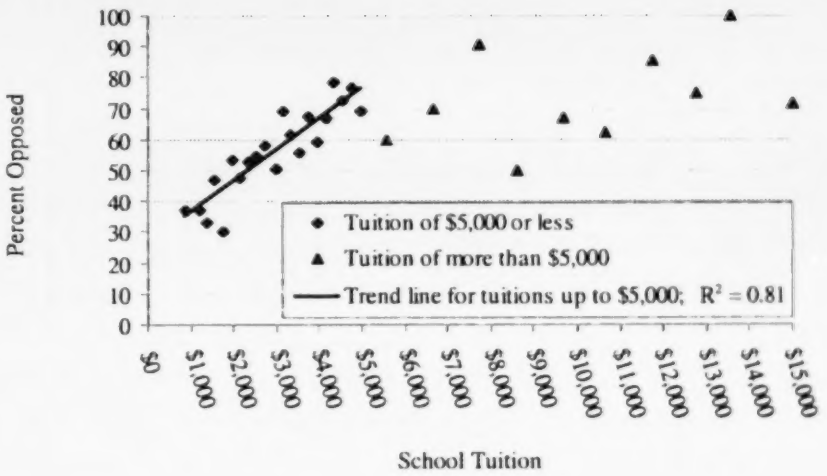
why should we be concerned about surviving once vouchers make some additional schools 'free' for all children?" Also, religious schools are often governed by a broader religious body that can prevent all schools of that denomination from undercutting each other by accepting vouchers with intrusive regulations.[44]

The first regulation presented in the survey was "Some school choice programs provide a maximum payment of approximately half of the per pupil spending for public schools in the area, and forbid the school from charging any additional tuition to the parents of voucher recipients, regardless of the normal tuition rate." Not surprisingly, opposition[45] is strongly correlated with the tuition rate of the school, as illustrated by Figure 1.[46] Of the very lowest tuition schools (below $1,400) only about one-third oppose such caps, and the opposition rate rises steadily to 75 percent for moderately high tuition schools (about $5,000).

The second question concerned a similar regulation, except that schools could charge "a relatively small additional fee such as $250 per

All the current voucher programs place numerous regulations on participating private schools.

Figure 1
Opposition to Tuition Caps



year." Overall support for this regulation was 10 points higher than for the first, though change in participation was slight.[47] The fact that support increased more than participation may reflect the belief that parents are more involved in their children's education when they have some financial investment in it, making the additional charge philosophically preferable even though it has little effect on school revenue.

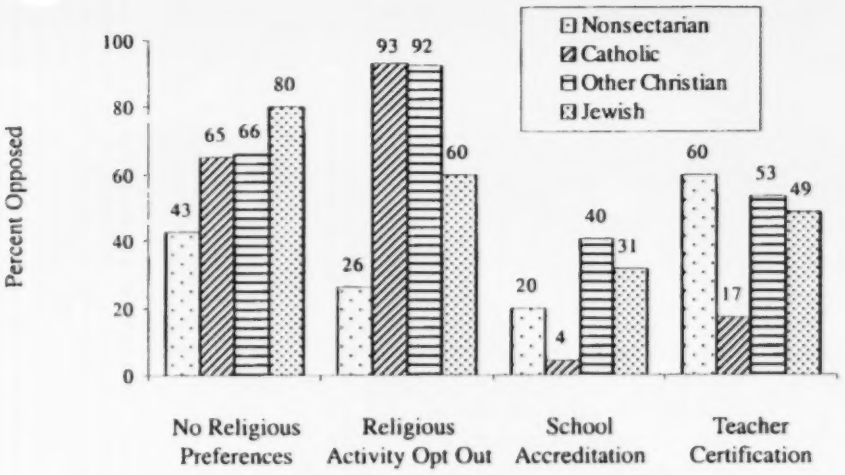
Some regulations address religious issues, so of course religious schools have very different opinions from nonreligious schools on these questions.[48] Christian schools, regardless of denomination, are opposed to losing the ability to prefer members of their own denomination in admissions and are very strongly opposed to allowing some students to opt out of religious activities. Somewhat surprisingly, Catholic schools are dramatically more supportive than other schools of a couple of regulations having nothing to do with religion—school accreditation and teacher certification requirements.[49] Figure 2 illustrates the results of questions displaying substantial differences of opinion depending on religious affiliation.[50]

Catholic schools are dramatically more supportive than other schools of school accreditation and teacher certification requirements.

Only one regulation was supported by a majority of schools in every category: the prohibition on teaching "hatred" of any person or group on the basis of race, ethnicity, national origin, or religion. In his dissent in *Zelman v. Simmons-Harris*, Justice Souter commented that such a provision in the Cleveland program could be interpreted to prohibit teaching certain passages from the scriptures of Christianity, Judaism, and Islam. That possibility was apparently not recognized or considered serious by most private school principals, despite the hint at the end of the question: "The law does not define the word 'hatred.'" Overall, only 19 percent of schools were opposed to this provision, with non-Catholic Christian schools most likely to be skeptical (26 percent opposition). Interesting-ly, the Islamic schools indicated the strongest support, with six of eight indicating they would "definitely" support the provision and zero opposing it.[51]

Regulations limiting discretion in the admissions process were most consistently opposed across all types of schools. The first admissions regulation presented was the use of a random lottery to admit students if there are not enough spaces available for all applicants. Here the answers were correlated with the tuition level of the school—a rough proxy for higher selectivity—rather than religious

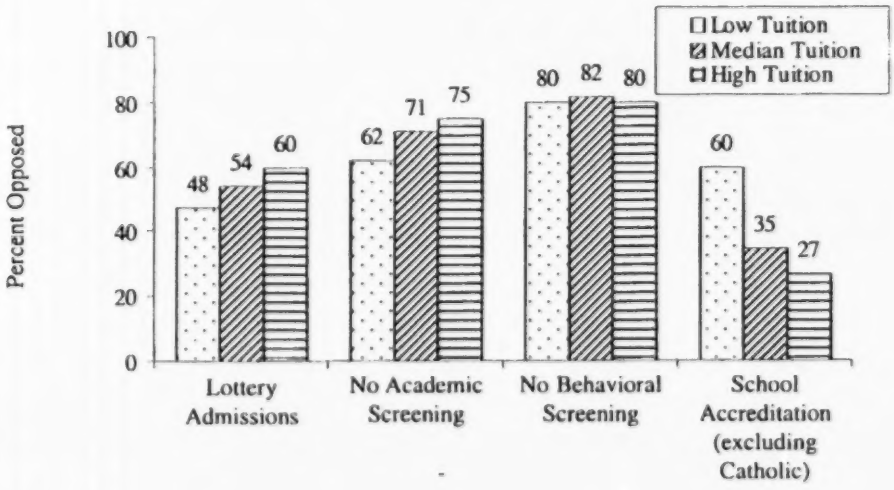
Figure 2
Opposition to Regulation by Religious Affiliation



affiliation.[52] A little over half of the schools opposed a lottery requirement, with higher opposition among higher-priced schools. About one-third supported the regulation, but apparently many of the supporters did not realize the implications of a lottery until presented with the next two questions. Opposition jumped up substantially in response to the prohibition of academic-based admissions screening, though a difference was still seen between the higher- and lower-tuition schools. If schools are not allowed to deny admission to children on the basis of behavioral problems, over 80 percent of schools oppose this regulation, regardless of tuition levels or any other demographic category. Figure 3 illustrates the opposition to admissions regulations.[53]

Regulations limiting discretion in the admissions process were most consistently opposed across all types of schools.

Figure 3
Opposition to Regulation by Tuition Category



Tax credits were acceptable to virtually every school, with only 3 percent opposing personal tax credits and 0.5 percent opposing scholarship tax credits.

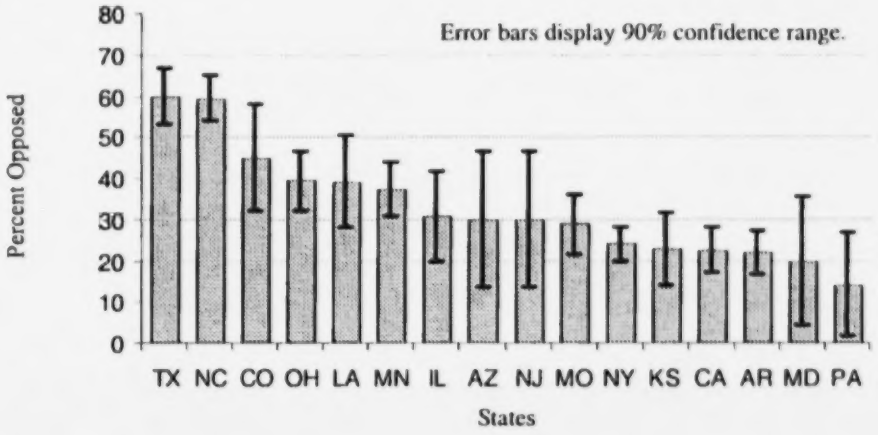
The last set of regulations proposed involved extending certain state public school standards to private schools. It has already been noted that Catholic schools are far more amenable to accreditation and teacher certification requirements than are other schools. Excluding the Catholic schools, there is a strong inverse correlation between tuition levels and opposition to accreditation requirements, as illustrated in Figure 3. Teacher certification does not show such a strong correlation with tuition when Catholic schools are excluded, though low- and high-tuition schools are somewhat more opposed than median-tuition schools.[54] The schools were also asked about being required to administer the same standardized tests required for public schools in their state or locality. This is the only question that was more highly correlated with the location of the school than with its religious affiliation or tuition or selectivity level.[55] Figure 4 illustrates opposition to standardized testing by state.[56] Most of these states use unique standardized tests, and apparently some of them are quite unpopular and others are much more accepted.[57] On the other hand, the schools in states using the Stanford 9 test have uniformly low opposition, about 23 percent.[58]

After answering the regulation questions, the school directors were asked to indicate their general support for vouchers and tax credits. Despite having just expressed majority opposition to several regulations that might be attached to school choice, they expressed overwhelming support for the concept.[59] Overall, 82 percent of principals indicated they supported vouchers. Non-Catholic Christian and nonsectarian schools were most likely to oppose (15 percent each), and Catholic schools were least likely to oppose (4 percent). Tax credits were acceptable to virtually every school, with only 3 percent opposing personal tax credits and 0.5 percent opposing scholarship tax credits.

Finally, the school directors were asked to rank five categories of regulation from most concerning to least concerning. A number of them commented that they found three or four of the regulations equally problematic, so even a concern ranked third may be serious to many schools. Of course, there was variation from school to school, but generally they ordered the following regulations consistently across religious affiliation and tuition levels:

1. Loss of control over admissions standards
2. Capped tuition for participating students

Figure 4
Standardized Test Opposition by State



3. Increased state supervision and reporting requirements and
   Application of state education standards such as standardized testing and/or teacher certification (approximately tied).

Not surprisingly, religious schools ranked "possible restrictions on religious teaching" first, ahead of loss of control over admissions standards, and nonsectarian schools ranked it last.

Reacting to Regulation: When Can Schools Actually Stick to Their Convictions?

The survey results show that schools often have different regulatory concerns according to religious affiliation. The vast majority of private schools answering the survey—and nationwide—are religiously affiliated. If education were not skewed by "free" residence-based education, it is highly unlikely that religious schools and their preferences would be as dominant.[60] The behavior of nonreligiously affiliated schools would become much more relevant in a competitive market, but in any school choice program the first schools on the scene are going to be overwhelmingly religious. To understand whether a school choice program will promote a free market in education, we must consider how religious schools will behave when they are dominant and whether that behavior will block the development of other types of private schools.

Principals of Christian schools express strong convictions about the place of religion in their schools. In the survey they overwhelmingly indicated that they would not participate in a school choice program if it required them to separate religious instruction and excuse some children. They have the ability to follow through on this conviction as well. Their current students come from families who are willing to pay extra to obtain a religious education. A minority of children at the school may be there for different reasons, and might leave if a school choice program in which only nonreligious schools participated were made available, but a few such exits would not be disturbing to these schools. Such a program would probably generate new private schools (if the voucher or credit amount and breadth of eligibility were sufficient) but would leave religious parents dissatisfied with the inequity of double payment.

The opt-out regulation would be fairly easy for Christian schools to resist because religious parents would see it as reducing the value of the school. Requiring schools to admit students with serious behavioral problems would similarly be easy to resist for all types of schools. It is reasonable to assume that most private school parents would choose to continue paying their own way to preserve the positive disciplinary atmosphere of their schools if the cheaper alternative were a chaotic classroom. With the overwhelming majority of parents and schools lined up together in opposition to letting troublemakers into the classroom, there would be little point in even offering a school choice program with such a regulation.[61]

Other regulations may be opposed by private schools, but their ability to continue to resist the regulation is dependent on the availability of substitute private schools in their area. Where eligible parents are indifferent about two private schools, of course they will choose the one participating in the school choice program. If enough schools agree to accept the regulation and accept new enrollments, parents will start exiting the nonparticipating schools. If enough families can exit to imperil the existence of the nonparticipating schools, those schools will probably comply with the regulation rather than close.

Even if current private school parents are indifferent to or support a particular regulation, that regulation may nonetheless be harmful. The problem with such a regulation is not its effect on existing private schools but its effect on potential new private schools. Take, for instance, accreditation requirements. According to the survey results, about two-thirds of private schools would not oppose requiring accreditation as a condition for participation in a voucher or tax credit program, because they are already

Even if current private school parents are indifferent to or support a particular regulation, that regulation may nonetheless be harmful.

accredited. Furthermore, within most major categories of existing private schools parents will be able to find an accredited substitute for their current school. This will force unaccredited schools to become accredited to keep their current students, which may be a costly hurdle but probably will not do significant damage to the mission or success of these schools.

But then consider education entrepreneurs who would like to start new schools with the help of the school choice program. Schools generally must be in operation for a few years before an accrediting body will vouch for them, so the new school has no hope of accreditation at first. Even if the school choice program makes provisional allowances for new schools, any school planning to use highly innovative methods or curricula will have a hard time finding an accrediting body that will approve. And, even assuming that some kind of accreditation is possible, it may raise the cost of operating enough to make the enterprise not worth pursuing. That may explain why the majority of lower-cost schools are opposed to requiring accreditation (apart from the Catholic schools that have their own accrediting body). In the end, potential new private school students will be deprived of choices they might prefer, and the school choice plan will do little more than subsidize and standardize the private schools that already exist.

The real threat of school choice programs to existing private schools is not regulations proposed up-front but those imposed after the schools have become dependent.

If a school choice plan blocks the development of new private schools, it is also possible that large numbers of children will end up attending religious schools sponsored by denominations of which they are not members. A significant number of inner-city Catholic schools already enroll more non-Catholics than Catholics. Parents of children in those schools may prefer to opt out of religious activities and spend more time and resources on academics, arts, or sports instead of religion. As long as the Catholic schools heavily subsidize tuition and stick together closely under a diocesan structure, they can resist pressures to secularize. But if some Catholic schools break rank and start to secularize, all Catholic schools with large numbers of non-Catholic students will be subjected to market pressure to follow suit. Likewise, if Catholic schools take advantage of the school choice program to raise tuitions and reduce subsidization, they will lose their economic advantage and face greater market pressure from new private schools. Some Catholic schools may even end up severing their formal ties with the Church to stay operational.[62]

Market pressure is not the only kind of pressure on private schools, however. Schools dependent on public funding are also subject to significant political pressure. If the creation of new private schools is blocked by insufficient voucher or tax credit amounts, or by stifling regulations, the appropriate solution would be to raise the cap or lift the regulation. Unfortunately, the political process does not always produce appropriate solutions. Particularly if the cause of the private school shortage is not clear to policymakers, they may try to solve the problem by imposing *additional* regulations on schools. That response could create a very serious dilemma for existing private schools if they have become dependent on a school choice program. If parents cannot afford tuition on their own, schools will have no realistic option of withdrawing from participation in order to avoid the new regulations. The real threat of school choice programs to existing private schools is not regulations proposed up-front but those imposed after the schools have become dependent.

The Milwaukee voucher program demonstrates this principle at work. Milwaukee is the only enacted program with an opt-out clause in the law. Most religious schools in the city participate in the program, seemingly in sharp contradiction with the preferences expressed in the survey. But the religious schools in Milwaukee started accepting scholarships when they were being administered by PAVE, a private organization that did not impose the regulations in the voucher law. Some religious schools had signed up voucher students before the injunction forced funding into the private sector, but

PAVE was active during that time urging the religious schools to participate and minimizing the impact of the regulations.[63] Three years later, when the Wisconsin Supreme Court approved the vouchers for religious schools, on average half of children enrolled in participating schools were dependent on the scholarships.[64] PAVE then handed these over to public funding and state regulation. The schools had little choice but to go along.

Fortunately, in Milwaukee there are many nonreligious options so parents who do not want religious education can simply stay away from religious schools. Perhaps because few parents perceive a problem there has not been any serious attempt to enforce the provision.[65] But if Milwaukee had not provided high voucher amounts and a head start to nonreligious schools, the results could have been devastating to religious education. And private schools of all types in Milwaukee are still highly susceptible to having additional regulations imposed because they are dependent on government funds.

Guidelines for Creating a Free Market in Education

Given the results of the survey and the review of the regulatory landscape, I now suggest a series of dos and don'ts for policymakers, organized under four basic principles. The dos are ideal attributes of a school choice program, and the don'ts are regulatory mistakes counterproductive to creating a free market in education. Some options may fall between the ideal and the counterproductive; these unmentioned options may be acceptable as compromise measures until public support for a free market in education is stronger.

Principle 1: Create Broad-Based Demand

- DO make choice available to everyone. It is crucial to include middle-income families and those living in "good" public school districts if school choice is meant to drive innovation and overall improvement in American education.
- DON'T stake claims of efficacy on programs with eligibility limited to low-income families or the worst school districts. If a limited eligibility program is the only feasible option at present, be modest and realistic in stating its impact on participating children and education in general. It is easy for opponents to find evidence against inflated claims, discrediting the school choice movement. This could kill off school choice before it broadens enough to prove itself.

Principle 2: Offer a Wide, Regulation-Free Playing Field to Schools and Eliminate Entry Barriers for Newcomers

- DON'T assume that a regulation is acceptable just because most private schools do not oppose it. Keep in mind that present-day private schools are geared toward a few niche markets among families. Most parents with children currently in public schools would demand different types of schools with different regulatory concerns. Also, regulations may be costly barriers to entry for potential entrepreneurs.
- DON'T play bait-and-switch. Do not get schools and families hooked on a school choice program and then enact more regulation in exchange for an expansion in the school choice program. This strategy will destroy the independence of private schools, the very attribute that makes them desirable. If policymakers are willing to trade increased regulation for some degree of choice for more children, it is better to establish charter schools than compromise private schools.
- DO erect legal barriers to regulation. A change in the balance of political power can create another form of the bait-and-switch dilemma described above. Savvy entrepreneurs will also recognize the risk of future regulation and may stay out of the arena if they think those risks are too high. California's Proposition 38 (the school voucher initiative that was on the ballet in 2000) contained exam-

California's Proposition 38 contained examples of several commendable measures that would stave off regulation.

ples of several commendable measures that would stave off regulation and thus reassure entrepreneurs and protect existing schools.[66]

- DO initially limit the funds for students already attending private school. Focusing the funds on students switching from public schools to private schools will create demand for new private schools and increase the variety of educational options for everyone. This also has political advantages: the creation of new schools will minimize pressure on existing private schools to change, thus helping to avoid bait-and-switch scenarios, and removing students from public schools will generally reduce educational spending, making the program more attractive to legislators and voters. Students already attending private schools can be phased in over time, and certainly should be in the interest of fairness.

To keep education affordable while preserving freedom in educational choices, parents must bear the cost of spending too much and enjoy the benefit of economizing.

Principle 3: Avoid Skewing Prices

- DO structure payments so parents may enjoy savings or bear expenses. Any time there is a third-party payment system, there is the potential for spiraling costs or imposition of price controls, or both. To keep education affordable while preserving freedom in educational choices, parents must bear the cost of spending too much and enjoy the benefit of economizing. There are two possible ways to do this: have parents pay a percentage of tuition, or offer a fixed amount so that parents pay for any overrun and receive a refund of any savings. Most programs choose the percentage option, but anyone versed in economic principles will recognize that this *reduces* but does not eliminate the tendency of parents to overspend taxpayer funds. A fixed amount, if parents were allowed to keep any unused funds, would be preferable because this method would not skew prices. If a fixed amount came in the form of a tax credit, it would be no different in principle from creating a state-level child tax credit comparable to the federal one already in existence. California's Proposition 38 offered a comparable option in the voucher arena by providing that any unused voucher funds would roll into an account that could be used for future education expenses, including college education.
- DON'T cap the amount the schools can charge parents. Parents should have the freedom to choose to pay more for an education that they believe is worth more. Schools also need room to engage in research and development and recoup those costs, or offer services to special needs children.
- DO design the program around the cost of nonsubsidized schools, not Catholic schools. It is appealing to imagine that children can be educated for less than half the price of public schools, and making that claim certainly helps to get school choice legislation passed. However, because even the most frugal nonsubsidized school will probably need to collect about twice as much tuition as Catholic schools do, a school choice program organized around Catholic school tuition levels will end up doing little more than easing the budget of the local diocese. Policymakers should look at local low-cost nonreligious schools and charter schools for a more realistic estimate of the minimum cost of education.

Principle 4: Avoid Conflicts of Interest by Maximizing Individual Responsibility and Minimizing Subsidization

- DO require parents to use tax credits and personal resources as much as possible. Elimination of third-party payers (taxpayers or charities) reduces regulatory pressures. Therefore personal tax credits should be used as much as possible. To increase the tax base against which parents can take a credit, lawmakers should offer credits against both property[67] and state income tax.

- DO focus charitable contributions on need-based aid to students rather than on general school subsidies. Third-party payers can create conflicts of interest, skewed prices, and distorted markets even when the payment is in the form of charitable giving. Religious organizations in particular should consider adopting "true-cost tuition" and channeling donations toward aid for lower-income families. That would minimize future market pressure to secularize.
- DON'T make direct outlays of government funds. Direct state spending makes all taxpayers involuntary contributors to a program, creating pressure to regulate participating schools. Universal tax credits can offer the same benefits as vouchers without making anyone an involuntary contributor to private schools. Tax credits also avoid potential state constitutional impediments. Universal tax credits may look more complex on paper, but there is no economic or political reason why they are any less feasible than universal vouchers. Scholarship tax credits, likewise, can accomplish anything that a limited-eligibility voucher can.
- DON'T offer large-scale tax credits without offsetting public savings. Tax credits can create involuntary funding in a roundabout way, giving rise to the same problems as vouchers. If large numbers of private school families claim a credit but few children leave public schools, a state or locality will suffer lower revenues without lower costs, forcing it to raise taxes or cut services. To avoid this problem, a large-scale school choice plan should initially exclude children already attending private schools. Most tax credits must go to children who are actually relieving the public schools of the cost of educating them. Private school families should be phased in slowly, preferably by offering them a smaller maximum credit and gradually increasing it as savings are realized in the public system.

Conclusion

For over a decade, supporters of school choice were so focused on establishing the constitutionality of school choice and influencing public opinion that they tended to pay little attention to the effects of actual programs. Policymakers now need to turn their attention to detail when drafting and arguing for new school choice legislation. Poorly designed school choice programs will fall far short of expectations, and public enthusiasm for choice will be lost. Even worse, burdensome regulations may impoverish the existing private school market in terms of diversity, resources, and quality. If children, present and future, are to receive the maximum benefits of school choice, policies must be carefully crafted to preserve and expand the freedom and independence of private schools.

Appendix: Survey Method

From the 5,573 schools that were contacted, 1,007 responses were collected, representing an 18 percent response rate. This is a sizable sample of the approximately 23,000 private elementary and secondary schools in the nation, but there are a number of ways in which bias could have been introduced into the results.

First, Children's Scholarship Fund programs are for low-income children and often limited to a single city or metropolitan area, so the schools participating tend to be more urban and have more low-income and minority children than private schools generally.[68] Second, the response rate was highly varied among schools surveyed by the various CSF programs, depending on the capacity of local CSF staff members to make reminder phone calls to schools. This resulted in over half the responses coming from five geographic regions, rather than having a proportional nationwide distribution. (New York City accounts for 16 percent of answers collected; North Carolina, 12 percent;

Poorly designed school choice programs will fall far short of expectations, and public enthusiasm for choice will be lost.

If children are to receive the maximum benefits of school choice, policies must be carefully crafted to preserve and expand the freedom and independence of private schools.

Arkansas, 10 percent; Kansas City metro area, 9 percent; and Minneapolis/St. Paul, 9 percent.) Finally, low voluntary response rates generally raise a concern of bias toward strong, and particularly negative, opinions.

To test for bias, the survey answers to each question were subjected to statistical tests for independence against several factors that could bias the results. Most important, answers from CSF programs with ideal response rates (over 75 percent), moderately high response rates (50–75 percent), and low response rates (under 50 percent) displayed no significant differences. (Based on chi-test performed with and without controlling for religious affiliation. In comparing the answers by response rate, both tests showed independence ($p > .1$) for most questions. In the only two cases where neither test showed statistical independence ($p < .05$), the non-Catholic Christian schools from CSF programs with low response rates were somewhat more supportive of the regulation—the opposite of typical voluntary response bias.) This is strong evidence for no serious voluntary response bias in the data.

Answers from the five major geographic areas were compared with the remaining scattered answers; schools with low, moderate, and high proportions of minority students (low proportion defined as less than 10 percent minority; high proportion defined as more

Table A-1
Demographics of Survey Respondents vs. All Private Schools

	Respondents	All Private Schools*
	Community Type	
Large city urban	43.9%	21.9%
Large city suburban	26.5%	30.9%
Mid-sized city or metro area	21.0%	26.9%
Small town or rural	8.6%	20.3%
	Racial Composition	
White, non-Hispanic	51.2%	75.4%
Black, non-Hispanic	21.9%	11.9%
Hispanic	14.1%	8.0%
Asian	5.1%	3.9%
Native American	0.4%	0.7%
	Religious Affiliation	
Nonreligious	9.0%	18.6%
Catholic	45.0%	33.8%
Protestant/other Christian	41.7%	43.0%
Jewish	3.6%	2.5%
Islamic	0.8%	0.5%
Other religious	0.0%	1.5%

Source: U.S. Department of Education, Private School Survey Database 1999–2000 (available from the U.S. Department of Education).

*Early childhood education and special education schools were excluded in calculating these percentages and all other private school statistics derived from this database. States frequently place special education students in private schools at state expense, so special education schools are often primarily state-funded despite being categorized as "private" schools.

than 50 percent minority); and schools in urban, suburban, midsized town, and rural communities. Most of the answers displayed independence, and even statistically significant differences were only moderate differences in *intensity* of preference. In no case did a majority preference become a minority preference when answers were separated by these factors.

Notes

1. 122 S. Ct. 2460, 2467 (2002).

2. Note that so-called refundable tax credits are really vouchers according to this source-of-funds definition. Under "refundable tax credits," many families would receive a check drawn from the state treasury because the amount of the tax credit exceeds their state or local tax bill.

3. Every statute or bill listed in this section includes this type of provision.

4. S. 722, 415th Gen. Assem., 2001 Reg. Sess. (Md. 2001) (sex and disability); H.R. 802, 21st Leg. (Haw. 2001) (family status); and H.R. 71, 2001 Reg. Sess. (Miss. 2001) (economic status and disability).

5. Milwaukee Parental Choice Program, Wis. Stat. Ann. § 119.23, Pilot Project Scholarship Program; Ohio Rev. Code Ann. §§ 3313.976–.977, Opportunity Scholarship Program; Fla. Stat. Ann. § 229.0537; and Colorado Revised Statutes, Title 22, Article 56, Colorado House Bill 1160.

6. Wis. § 119.23; and Ohio Rev. Code Ann. § 3313.977.

7. Proposition 38, § 8.5(i)(4) (Cal. 2000), http://vote2000.ss.ca.gov/VoterGuide/text/text_proposed_law_38.htm; and H.R. 2252, 45th Leg., 1st Reg. Sess. (Ariz. 2001).

8. Wis. Stat. Ann. § 119.23.

9. Ohio Rev. Code Ann. § 3313.976.

10. Wis. § 119.23, Opportunity Scholarship Program; and Fla. Stat. Ann. § 229.0537.

11. Fla. Stat. Ann. § 220.187; Fla. § 229.0537; and H.R. 1071, 83d Reg. Sess. (Ark. 2001), Proposition 38.

12. S. 891, 2001 Reg. Sess. (La. 2001).

13. Fla. § 229.0537; and Ohio § 3313.976.

14. Fla. § 229.0537; and H.R. 2252, 45th Leg., 1st Reg. Sess. (Ariz. 2001).

15. ME ST T. 20-A s 2951. Note that the Maine voucher is not otherwise discussed in this article because it was not created as part of the modern voucher movement and is only intended to ease the state's burden in funding rural public schools.

16. Colorado Revised Statutes, Title 22, Article 56, Colorado House Bill 1160. Also, Proposition 38, H.R. 515, 157th Gen. Ct., 1st Yr. (N.H. 2001).

17. S. 891, 2001 Reg. Sess. (La. 2001).

18. Two important forms of school choice are not included in the table. The first is charter schools. Charter schools can be understood as schools where all the students receive vouchers, religious education and affiliation are forbidden, and there are generally some additional school regulations not normally attached to voucher or tax credit programs. Keeping this in mind, the commentary on voucher programs and regulations can be applied in certain situations to charter schools. Also not included are privately funded scholarship programs. These operate like—and greatly predate and outnumber—the organizations involved in scholarship tax credits. Although privately funded scholarship programs are governed by private boards, not government, these organizations are sometimes subject to pressures from donors analogous to political pressures. Therefore much of the following evidence and commentary about scholarship tax credits applies to privately funded scholarship programs.

19. Iowa and Illinois have tax credits available to all families, regardless of income, but the Iowa tax credit is worth only $250 per child and the Illinois tax credit is worth up to $500 per family. Neither amount is large enough to make any significant impact on the availability of private education in these states.

20. U.S. Department of Health and Human Services, 2003 Poverty Guidelines. http://aspe.os.dhhs.gov/poverty/03poverty.htm.

21. John F. Witte, *The Market Approach to Education: An Analysis of America's First Voucher Program* (Princeton, NJ: Princeton University Press, 2000), p. 117.

22. Paul E. Peterson et al., "An Evaluation of the Cleveland Voucher Program after Two Years," Harvard University Center for Education Policy and Governance, 1999, p. 7.

23. In Washington only 6 percent of the research participants were not African American so statistically significant results for others would be virtually impossible. But 24 percent of participants in

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Dayton were white and 42 percent of participants in New York were Latino, yet neither group experienced statistically significant test score gains. Patrick J. Wolf et al., "Results of a School Voucher Experiment: The Case of Washington, D.C. after Two Years," Harvard University Center for Education Policy and Governance, 2001, p. 42; Martin R. West et al., "School Choice in Dayton, Ohio after Two Years: An Evaluation of the Parents Advancing Choice in Education Scholarship Program," Harvard University Center for Education Policy and Governance, 2001, p. 42; and Daniel Mayer et al., "School Choice in New York City after Three Years: An Evaluation of the School Choice Scholarships Program," Harvard University Center for Education Policy and Governance, 2002, p. 44.

24. Ibid., p. 38.

25. West et al., p. 4.

26. Wayne J. Camara and Amy Elizabeth Schmidt, "Group Differences in Standardized Testing and Social Stratification," College Entrance Examination Board, New York, 1999, www.collegeboard.com/research/html/rr9905.pdf.

27. Robert J. Kealey, "Balance Sheet for Catholic Elementary Schools: 2001 Income and Expenses," National Catholic Education Association, 2001, p. 18.

28. Ibid. Compare tables, pp. 12 and 20.

29. U.S. Department of Education, National Center for Education Statistics, *Digest of Education Statistics 2001* (Washington: U.S. Department of Education, 2001), Table 62.

30. Most nonparochial private schools are about twice as expensive as Catholic schools. See National Center for Education Statistics, *Digest of Education Statistics 2002* (Washington: U.S. Department of Education, 2002), Table 61.

31. Amy Hanauer, "Cleveland School Vouchers: Where the Students Go," Policy Matters Ohio, January 2002, p. 2, www.policymattersohio.org/pdf/WhereStudentsGo.pdf.

32. U.S. Department of Education, Private School Survey Database 1999–2000 (available from the U.S. Department of Education).

33. Doug Oplinger and Dennis J. Willard, "David Brennan's White Hat Management Changes the Way Business, Politics and School Vouchers Mix," *Akron Beacon Journal*, December 13, 1999, p. A1; and Hanauer, pp. 3–4.

34. Doug Oplinger and Dennis J. Willard, "Voucher System Falls Far Short of Goals Intended to Benefit Underserved Public-School Kids, Program Has Become a Blessing for Catholic Institutions" and "Voucher Plan Leaves Long List of Broken Vows, Program Costs Public Schools, Doesn't Raise Private School Enrollment and Leaves Handicapped Students Behind," *Akron Beacon Journal*, December 14, 1999, pp. A1, A10.

35. In Arizona and Pennsylvania there are no limitations on children already attending private schools participating in the program. Another important distinction is that the scholarship organizations in these states can be organized by any group and can take 10 percent of creditable revenues to cover administrative expenses. As a result, many of the organizations represent interest groups and award scholarships only for a subset of schools (defined by religious or curricular affiliation) or students (defined by ethnicity or membership in an organization). A few organizations offer scholarships for all children at any type of school. In Arizona the best estimates indicate that only 20–25 percent of students using the scholarships were not already attending private schools before receiving scholarships, even after four years of operation. Carrie Lips and Jennifer Jacoby, "The Arizona Scholarship Tax Credit: Giving Parents Choices, Saving Taxpayers Money," Cato Institute Policy Analysis no. 414, September 17, 2001, p. 8.

36. The Catholic bishops in the state were very upset by the public school attendance requirement because it locked out participation by most children already attending Catholic schools. Apparently in an attempt to force a change in the law the bishops ordered the Catholic schools not to enroll any scholarship recipients. Some schools broke ranks, but in some dioceses the Catholic schools were very compliant. The bishops did not relent until the last minute, so a limited number of scholarship recipients enrolled in Catholic schools. E-mail Interview with Michele Cuteri, executive director, Florida Parental Rights in Deciding Education, November 26, 2002.

37. Ibid..

38. Wisconsin Legislative Audit Bureau, Rpt. No. 00-2, Milwaukee Parental Choice Program, February 2, 2000, p. 49, www.legis.state.wi.us/lab/reports/00-2full.pdf; and American Education Reform Council, "Schools That Choice Built," January 2003, www.schoolchoiceinfo.org/data/research/SchoolsBuilt.pdf. Also see "Milwaukee Voucher Program Continues to Expand," *School Reform News*, May 2003, p. 6.

39. Witte, pp. 90, 84; and Wisconsin Legislative Audit Bureau, Appendix I.

40. Andrew Coulson, *Market Education: The Unknown History* (New Brunswick, NJ: Transaction, 1999), p. 328.

41. Special thanks to the people who collaborated in making the survey of private schools possible: Greg Omand, for programming the survey website; Kate Wood of the University of Virginia Center for Survey Research for expert advice; Douglas D. Dewey and Richard R. Hough III for facilitating the cooperation and participation of the Children's Scholarship Fund programs; and the directors, administrators, and donors of the Children's Scholarship Fund offices and partner programs for generously providing the time and money required to contact thousands of private schools.

42. Two questions showed significant shifts depending on what percentage of children are eligible. On the question of whether the school would accept a voucher as the sole payment for a child, 25 percent are less likely to participate when more students are eligible. Only 13.5 percent are more likely to participate, which is the response that would be expected from a for-profit service provider concerned about losing customers and revenue. Also, 10 percent of schools are less likely to participate in a program forbidding preferences on the basis of religion when more children are eligible; most of these are Catholic schools.

43. This finding is in stark contrast with private universities, which must comply with a number of federal regulations in order to qualify their students for federal student loans and grant programs. Of the thousands of universities in this nation, the schools refusing the federal programs in order to remain free of these regulations can be counted on one hand: Hillsdale College, Grove City College, and Christendom College to this author's knowledge.

44. Again, compare with private universities. Religiously affiliated colleges and universities have chosen to work within the framework required for federal assistance eligibility, despite often sharing a commitment to their religious mission similar to that of precollege schools. One important difference is that private universities operate in an environment where most college students rely on the availability of federal assistance. Furthermore, they do not have a strong collective advantage because of much looser control by religious bodies and the ability of students to choose schools nationwide.

45. The choices for each question in the survey were: Definitely Not, Probably Not, Neutral, Probably, Certainly. Throughout this paper "opposed" refers to the principals who chose Definitely Not or Probably Not. For simplicity and because the answers are nearly the same, the results refer to "would you support" questions rather than "would you participate" questions unless otherwise indicated.

46. Schools were separated into tuition ranges and the percentage of schools in each range opposing the regulation plotted against the average tuition for that range. Schools with tuition up to and including $5,000 are categorized in ranges of $200. Schools with higher tuitions are categorized in ranges of $1,000 because there are too few of them to produce meaningful percentages with smaller ranges. Note that students attending very high tuition schools with CSF scholarships usually receive substantial financial aid from the school itself and the CSF scholarship is typically a small portion of the total financial aid package in these cases.

47. Fifty percent of low-tuition schools would certainly or probably support the program, versus 40 percent if no additional charges are allowed. Average-tuition schools increase support from 28 percent to 38 percent, and high-tuition schools increase support from 24 percent to 32 percent. Tuition categories are defined as follows: low tuition—below the 25th percentile for the school's grade range ($2,350 elementary, $4,205 secondary, $2,400 combined); high tuition—above the 75th percentile for the school's grade range ($3,575 elementary, $6,250 secondary, $4,600 combined); median tuition—between the 25th and 75th percentiles.

48. Exact wording of questions pertaining to religious issues was as follows: No Religious Preferences: "Some school choice programs prohibit participating schools from 'discriminating on the basis of religion,' which means that religious schools would not be able to give admission preference to members of their own religious group." Religious Activity Opt Out: "Some school choice programs require participating schools to allow students to 'opt-out' of all religious classes and activities if the student or parent requests this."

49. Exact wording of questions pertaining to school accreditation and teacher certification was as follows: School Accreditation: "Some school choice programs require participating schools to be accredited." Teacher Certification: "Some proposed school choice programs require that all classroom teachers at participating schools have current state teaching certification."

50. Of 1,007 schools responding, 438 were Catholic, 405 were other Christian, 87 were nonsectarian, 35 were Jewish, 8 were Islamic, and 34 did not provide religious affiliation information.

Islamic schools are not graphed because the sample is generally too small to be meaningful. Jewish school answers should also be considered with caution, partially because of the small sample size, but more so because all but two are Orthodox or Hassidic and two-thirds (23) are located in New York City, thus painting a rather narrow picture of Jewish schools.

51. Overall, 42 percent of non-Catholic Christian schools indicated they would "definitely" support the regulation, and 57–60 percent of other schools did so. The difference is large enough to be statistically significant at $p < .01$ despite the small sample size of Islamic schools. The sample of Islamic schools answering the survey does not appear skewed in any obvious way, with each school located in a different state. Six of the Islamic schools provided racial data, with one having almost entirely black students, another having almost all Middle Eastern students, and the remaining schools having a fairly even mixture of black, Middle Eastern, and other Asian students.

52. Tuition categories are as defined above.

53. Exact wording of questions pertaining to admissions requirements was as follows: Lottery Admissions: "Some school choice programs require participating schools to use a random lottery process for admitting new students if there are not enough seats available for all applicants. (Siblings of current students are given priority ahead of the lottery.)" No Academic Screening: "One consequence of a lottery requirement is to prevent participating schools from denying admission to new students based on previous academic performance or entrance testing. Also, programs could specifically prohibit denying admission for academic reasons, regardless of whether a lottery is required." No Behavioral Screening: "Another consequence of a lottery requirement is to prevent participating schools from denying admission to new students based on behavioral problems. Also, programs could specifically prohibit denying admission for behavioral problems, regardless of whether a lottery is required."

54. Excluding Catholic schools, 65 percent of low-tuition schools, 57 percent of high-tuition schools, and 49 percent of median-tuition schools are opposed to teacher certification requirements.

55. The most expensive schools—those with tuitions over $6,500, representing the top 8 percent of tuition rates—are much more opposed to state standardized tests, with 63 percent opposed. There is no correlation between tuition and opposition among the remaining 92 percent of schools, however. After controlling for the very expensive schools, there appears to be no correlation with religion either.

56. States with fewer than 10 responses are not graphed.

57. U. S. Department of Education, Planning and Evaluation Service, State Education Indicators with a Focus on Title I, 2001, pp. x–xi, www.ed.gov/offices/OUS/PES/esed/2000_indicators/indicator_report.pdf.

58. California, Arkansas, and Arizona. Though Arizona appears to have a somewhat higher opposition percentage, the sample is much smaller and less reliable than the other two, as the error bars illustrate.

59. Exact wording of questions pertaining to general school choice support was as follows: Vouchers: "'Vouchers' refer to tuition payments for individual children, paid by the state or local government to private schools, funded by taxpayer dollars, usually awarded on the basis of financial need." Personal Tax Credits: "Some states give parents a tax credit for money spent on private school tuition, up to a maximum annual amount. Schools may need to complete some paperwork to confirm enrollment or eligibility, but no money is directly exchanged between the government and the school." Scholarship Tax Credits: "Some states give a tax credit to individuals and/or businesses for donations to scholarship programs similar to Children's Scholarship Fund."

60. Though the majority of schools would probably not be religiously affiliated, they probably would not be *devoid* of religion either. Public attitudes about prayer in school and the Pledge of Allegiance provide strong evidence that schools seeking to please parents and not restrained by the First Amendment would often teach "nonsectarian" Judeo-Christian beliefs and values.

61. Note, however, that there are a significant number of private schools that cater to children with behavioral or other problems. Children with behavioral problems and other disabilities would be well served by a school choice program that made these schools available to them. In many states, however, parents already have state-funded access to these private schools if they are willing and able to jump through the bureaucratic hoops necessary to qualify under IDEA programs. See Marie Gryphon and David Salisbury, "Escaping IDEA: Freeing Parents, Teachers, and Students through Deregulation and Choice," Cato Institute Policy Analysis no. 444, July 10, 2002.

62. For example, Messmer Catholic High School in Milwaukee officially severed itself from the archdiocese in 1992 and declared itself "secular" in an

attempt to qualify for the program before religious schools were allowed to participate, but the Wisconsin state superintendent still ruled the school "pervasively religious" and denied participation. It now identifies itself as an "independent Catholic high school." Wisconsin Legislative Audit Bureau, p. 16.

63. Witte, p. 187.

64. Wisconsin Legislative Audit Bureau, p. 49.

65. Ibid., pp. 45–53

66. Proposition 38 would have required a three-quarters vote to impose any additional regulations on private schools at the state level and a two-thirds vote at the local level. It would have placed the burden of proof on the government to establish in court that a regulation passed is both "necessary and does not impose any undue burden on private schools."

67. To expand the property tax credit to virtually all families, a credit may be offered to renters against their rent, which their landlord may in turn take as a credit against property tax. Such a solution has been offered in at least one tax credit proposal. S. 163, 63d. Gen. Assem., 2d Reg. Sess. (Colo. 2002).

68. See Table A-1 for a comparison of the demographics of the survey respondents and those of private schools nationwide.

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